

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.10059 OF 2024**

1. Gangadharrao Madhavrao Patwardhan,
Age: 77, Occ: Business,
R/a: 1181 Miraj House, Furguson College Road,
Dnyanenshwar Paduka Chowk, Opp. Hotel Lalit Mahal,
Shivajinagar Pune-411005.
2. Ganpatrao Madhavrao Patwardhan,
Age: 73, Occ: Business,
R/a: 1181 Miraj House, Furguson College Road,
Dnyanenshwar Paduka Chowk, Opp. Hotel Lalit Mahal,
Shivajinagar Pune-411005. ..Petitioners

Versus

1. Parekhs Medisales Private Limited
Registered Company under Companies Act, 1956
By and through the directors
Shri Mahesh Manubhai Parekh
Age: 43 years, Occ: Business,
R/a: "Nirmala" Parekh Medical Stores
Building, ST Stand Road,
RK Extension, Sangli.
2. Shri Mahesh Manubhai Parekh,
Age: 43 yers, Occ: Business,
R/a: "Nirmala" Parekh Medical Stores
Building, ST Stand Road,
RK Extension, Sangli. ..Respondents

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Mr. Chaitanya Nikte i/by Mr. Prajit S. Sahane, Advocate for Petitioners.
Mr. Ashutosh Kulkarni a/w Mr. Sarthak Diwan, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

**RESERVED ON : 25th SEPTEMBER, 2025.
PRONOUNCED ON : 30th SEPTEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioners (original defendants) impugn order dated 13.09.2023 passed below Exhibit-226 by learned Joint Civil Judge Senior Division, Sangli in Special Civil Suit No.195/1999, whereby application filed by respondent/plaintiff seeking amendment in plaint has been allowed.

3. The respondent no.1 instituted Special Civil Suit No.195/1999 against petitioners seeking relief of declaration of ownership, perpetual injunction and possession in respect of suit properties, more particularly specified in plaint alongwith map appended thereto at Schedule (A). It is contention of respondents that they acquired ownership of suit property in pursuance to proceeding of liquidation. The defendants appeared in suit and filed written statement denying material averments of plaint. The issues were framed, parties laid their evidence. On 15.07.2023 petitioners advanced their final argument, eventually, matter was posted for judgment.

4. At this stage, respondent/plaintiff filed application Exhibit-226 seeking amendment in plaint for adding description of property. Although petitioners opposed application on various counts, learned Civil Judge Senior Division, Sangli permitted plaintiff to carry out amendment in plaint. Aggrieved by order permitting amendment in plaint, present Writ Petition is filed.

5. Mr. Chaitanya Nikte, learned Advocate appearing for petitioners vehemently submits that Trial Court exceeded jurisdiction while entertaining application for amendment at the fag end of trial i.e. on conclusion of argument by parties. He would submit that Trial Court has no jurisdiction to permit amendment under Order VI Rule 17 of Code of Civil Procedure, unless due diligence is made out. The respondent/plaintiff is permitted to extend scope of suit by addition of properties in claim clause, which is detrimental and prejudicial to rights of defendants. The plaintiff was well aware about facts narrated in proposed amendment at the time of institution of suit. However, now he is belatedly trying to cure defects highlighted by petitioners during course of argument. The plaintiff previously amended plaint. The present amendment is sought at the stage of judgment, which shows plaintiff's intention to prolong suit.

6. Per contra Mr. Ashutosh Kulkarni, learned Advocate appearing for respondents invites attention of this Court to original pleading in plaint and points out that plaintiff has mentioned details of properties purchased by him under registered sale deed executed by Official Liquidator, which includes land Survey No.352/3. He would further point out that Miraj Glass Works Private Limited was owner and possessor of land including Survey No.352/3 admeasuring 14R, which was subject matter of liquidation proceeding and same is part of properties purchased by plaintiff. He would further submit that while

describing suit properties in plaint, aforesaid property was inadvertently left. Therefore, there were technical defect in description of properties, which has been rectified through amendment. He would, therefore, urge that Trial Court has rightly considered relevant aspects of matter and permitted amendment in plaint.

7. In impugned order Trial Court observed that plaintiff has come with a case that he has purchased total 2H 43R land from Survey Nos.347/1, 352/1 and 352/3. The Survey No.352/3 is constituted of area admeasuring 14R. The plaintiff is seeking possession of property as shown in map Exhibit-207. However, in said map 14R land is separately shown on North-East corner of Survey No.352 and same is not described in plaint and hand sketch map attached thereto on the basis of which possession is claimed. The Trial Court observed that technical infirmity occurred in description of suit property given in plaint. The Trial Court was of opinion that amendment is explanatory in nature and needs for rendering complete justice and avoiding multiplicity of proceedings between parties.

8. The Supreme Court in case of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr.*¹ has laid down parameters for dealing with application for amendment. It is observed that all amendments, which are necessary for effective adjudication of dispute between parties has to be liberally allowed. Although there is

¹ AIR 2022 SC 4256.

fetter in permitting amendment after commencement of trial, such amendment is needed to avoid multiplicity of litigation and give quietus to *lis* between parties, Court must liberally consider grant of such amendment.

9. In present case, it is evident that plaintiff's claim for recovery of possession is based on ownership acquired vide sale deed executed by Liquidator on behalf of Miraj Glass Works Private Limited. The description of property employed in plaint alongwith its map depicts that inadvertent error occurred while giving description of property, which is infact part of sale deed. It is not the case where plaintiff wants to bring on record claim for new property.

10. At this stage, Mr. Ashutosh Kulkarni, learned Advocate appearing for respondents, on instructions, makes statement that plaintiff do not wish to lead any more evidence in pursuance to amendment. However, plaintiff is open, if defendants wish to file additional written statement and recall plaintiff's witnesses for cross-examination, so that no prejudice is caused to defendants.

11. In aforesaid backdrop, this Court finds that no irreparable injury or prejudice would cause to defendants because amendment is permitted. Rather amendment is necessary to effectively adjudicate main issue in controversy between parties. There would be no change in nature of suit. On other hand, if amendment is disallowed, it would

lead to multiplicity of litigation. In that view of matter, this Court finds that Trial Court is justified in permitting amendment. No jurisdictional error is brought to notice of this court.

12. In result, Writ Petition stands dismissed.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE